

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | GEN Docket No. 01-74 |
| Reallocation and Service Rules for the 698-746 |) | |
| MHz Spectrum Band (Television Channels 52-59) |) | |

PETITION FOR RECONSIDERATION
OR CLARIFICATION
OF THE OFFICE OF THE CHIEF TECHNOLOGY OFFICER,
GOVERNMENT OF THE DISTRICT OF COLUMBIA

The Office of the Chief Technology Officer of the Government of the District of Columbia (“OCTO”), pursuant to Section 1.429 of the Rules, hereby asks the Commission to reconsider or clarify the Report and Order in the captioned proceeding, FCC 01-364, released January 18, 2002 (“Order”).¹ Speaking for the Government of the District of Columbia, but having in mind the potential interests of other public safety radio licensees or license applicants, OCTO seeks confirmation that:

- The amended service rules in Part 27 do not preclude applications for public safety radio services in the 698-746 band; and that
- Eligible public safety applicants are not required to bid at auction.

Upon confirmation, the Commission should explain or seek comment upon how the differing procedures for awarding commercial and public safety service licenses are to be reconciled without foreclosing the rights of auction participants or public safety applicants.²

¹ A summary of the Order having been published February 6, 2002, 67 Federal Register 5491, petitions for reconsideration must be filed within 30 days, or by March 8, 2002.

² As discussed further below, the FCC is engaged in an analogous undertaking in: Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Second Further Notice of Proposed Rulemaking, MM Docket No. 95-31, FCC 02-44, released February 25, 2002.

OCTO and other public safety authorities may wish to use the band for “private internal communications.”

Section 27.10(a) of the Rules adds to the eligible modes of Miscellaneous Wireless Communications Services “private internal communications.” Systems for this purpose are commonplace in local governments. The D.C. Government presently links its offices through multiple Centrex switches. In the future, OCTO may wish to recommend that these internal wire networks be backed up or supplemented by wireless systems not connected to the public switched telephone network.

The Order explains the decision to enlarge the uses of the 698-746 MHz band;

132. Consistent with the approach taken for the Upper 700 MHz Commercial Band, we are permitting private radio uses in the Lower 700 MHz Band. [citation omitted] In auctioning recaptured broadcast spectrum subject to Section 309(j)(14), Congress did not preclude use of the spectrum for private, internal communications. Our reallocation of the Lower 700 MHz band, therefore, includes the ability to provide private fixed and mobile radio services.

OCTO thus finds itself in the same position as those non-commercial educational (“NCE”) broadcasters who successfully resisted the FCC’s initial conclusion that if they wished to apply for station licenses in “unreserved” spectrum, they would be required to participate in competitive bidding.³ The appeals court agreed that Section 309(j)(2)(C) exempted NCE stations from auctions no matter whether the spectrum for which they were applying was reserved for them alone or not.

³ *National Public Radio v. FCC*, 254 F.3d 226 (D.C. Cir. 2001). As a result of this decision, the FCC has opened a proceeding to “seek additional comment on the procedures the Commission should use to license ‘non-reserved’ channels in which both commercial and noncommercial educational entities have an interest.” Second Further Notice of Proposed Rulemaking, MM Docket 95-31, FCC 02-44, released February 25, 2002.

Public safety service providers may not be compelled to bid for unreserved spectrum.

The counterpart exemption applying to OCTO's request, Section 309(j)(2)(A), covers:

public safety radio services, including private internal radio services used by State and local governments and non-government entities . . . that

- (i) are used to protect the safety of life, health, or property; and
- (ii) are not made commercially available to the public.

Like NCE stations, public safety radio licensees and applicants are sometimes beneficiaries of reserved spectrum. In fact, pursuant to Section 337(a)(1) of the Communications Act, 24 MHz of the total of 60 MHz lying between 746 and 806 MHz (the so-called 700 MHz Upper Band) are reserved for public safety services as defined. Working within Region 20, the D.C. Government has been assigned 2.4 MHz of the total when it becomes available upon vacation by incumbent TV stations.

Furthering the analogy to NCE stations, D.C. Government and other public safety licensees are not restricted to this reserved spectrum. To the contrary, Sections 337(c)(1) and (d)(3) affirmatively encourage application for otherwise unassigned spectrum and aggregation of unreserved with reserved frequencies. Under the reasoning of *National Public Radio*, public safety service providers may not be compelled to bid for unreserved spectrum.

Resolution of OCTO's petition
need not delay auctions and licensing.

Section 1.429(b) of the Rules requires that petitions for reconsideration (including clarification) be supported by facts or circumstances which have changed since the last opportunity for comment, or were unknown at the time, or a demonstration that the public

interest would be served by this later review. The changed circumstance is *National Public Radio*, note 3, *supra*. The pleading cycle in the rulemaking leading up to the Order closed a month prior to the release of the opinion by the U.S. Court of Appeals for the D.C. Circuit.⁴

In any event, the public interest would be served by clarification of the status of public safety radio service applicants in light of the Court of Appeals' ruling on the seemingly analogous rights of NCE applicants, prior to the conduct of an auction which could render non-commercial use moot. OCTO believes that any necessary public comment can be taken and the matter resolved in time to make any consequential changes to Auction 44, without slipping significantly the date of that auction. OCTO has no desire to delay either Auction 44 or the related Auction 31.

Conclusion

For the reasons discussed above, OCTO asks that the Commission confirm its understanding that public safety radio service eligibles may apply to provide private internal communications services in the 698-746 MHz band without bidding at auction, and further asks for guidance as to how the different procedures for commercial and public safety use can be

⁴ Although another five months would elapse between the release of *National Public Radio* and the Commission's adoption of the Order, it would not have been prudent to conduct discussion of the opinion's effects on public safety use of unreserved spectrum in an *ex parte* mode.

reconciled promptly without injury to the interests or rights of commercial and public safety entities.

Respectfully submitted,

OFFICE OF THE CHIEF
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